

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY KENNELLY,

Plaintiff,

v.

DR. A. FAGHIHNIA, JOSIAH SMITH,
and DR. WESTWOOD,

Defendants.

Case Number 06-15794

Honorable David M. Lawson

Magistrate Judge Charles E. Binder

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING MOTION TO
DISMISS, AND DISMISSING CASE**

Presently before the Court is the report issued on August 3, 2007 by Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b), recommending that this Court grant the defendants' motion to dismiss. The magistrate judge found that the plaintiff had failed to exhaust administrative remedies with respect to his Eight Amendment claim against defendants Faghihnia and Smith, and had failed to state a claim under the Eighth Amendment against defendant Westwood. The magistrate judge further stated that the Court should decline to exercise its supplemental jurisdiction over the remaining state-law claim. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 15] is **ADOPTED**.

It is further **ORDERED** that the defendants' motion to dismiss [dkt # 10] is **GRANTED**.

It is further **ORDERED** that the complaint is **DISMISSED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 4, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 4, 2007.

s/Felicia M. Moses
FELICIA M. MOSES